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G. The DEIR/S Fails to Adequately Identify and Analyze the Project's Cumulative Impacts.

The DEIR/S fails to provide an analysis of the cumulative impacts of this Project together with other projects in the area, as CEQA requires. The CEQA Guidelines define cumulative impacts as "two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts." (CEQA Guidelines § 15355.) "[I]ndividual effects may be changes resulting from a single project or a number of separate projects." (Id.) A legally adequate "cumulative impacts analysis" views a particular project over time and in conjunction with other related past, present, and reasonably foreseeable future projects whose impacts might compound or interrelate with those of the project at hand. Kings County Farm Bureau v. City of Hanford, 221 Cal.App.3d 692, 721 (1990).

The cumulative impacts concept recognizes that "[t]he full environmental impact of a proposed . . . action cannot be gauged in a vacuum." Whitman v. Board of Supervisors, 88 Cal.App.3d 397, 408 (1979). The requirement to provide a cumulative analysis of a project's regional impacts is considered a "vital provision" of CEQA. Bozung, 13 Cal.3d at 283. O042-10

While the DEIR/S includes a list of transportation-related projects to consider in the cumulative impacts analysis (DEIR/S, App. 3.17-A), aside from this list no analysis of cumulative impacts is presented. The DEIR/S fails entirely to identify the magnitude and severity, or the locations at which such cumulative impacts will occur, or the impacts of the HST in combination with the listed projects. This cursory approach is wholly insufficient under CEQA. And, while the DEIR/S admits that the HST will contribute to cumulative impacts in a number of impact areas, it again fails to provide any mitigation measures to address these potentially significant environmental impacts. Such a discussion is required and must be included in a revised DEIR/S.

H. The DEIR/S Fails to Identify an Environmentally Superior Alternative.

The DEIR/S conducts a comparison of environmental impacts caused by the No Project, the Modal, and the HST alternatives, and concludes that the HST alternative is the preferred system alternative (DEIR/S, p. S-8). It fails, however, to indicate the environmentally superior alternative alignment and station locations for the HST Project. (DEIR/S, pp. S-16, S-18) Because the DEIR/S is intended to be used in "selecting a preferred corridor and station locations" (DEIR/S, pp. S-16, S-18), the DEIR/S must include sufficient information about each alternative route and station location to allow the public and decisionmakers to make a meaningful evaluation and comparison of the options. (CEQA Guidelines § 15126.6(e)(2).) Such an analysis must be included in a revised and recirculated DEIR/S. O042-11

III. THE ANALYSIS OF SECTION 4(f) AND SECTION 6(f) RESOURCES DOES NOT COMPLY WITH FEDERAL LAW.

In enacting Section 4(f) of the Department of Transportation Act of 1966, Congress declared that "special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands." (49 U.S.C. § 303.) As a means of realizing these broad goals, Congress specified two fundamental substantive mandates under the Act: (1) federal agencies are prohibited from approving transportation projects that require use of a public park or recreation area unless there is no feasible and prudent alternatives to using the parkland; and (2) transportation projects which use a public park or recreation area are required to include all possible planning to minimize harm to the parkland. (49 U.S.C. § 303(c).) The United States Supreme Court has held that "only the most unusual situations are exempted" from the 4(f) mandate. Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402, 411 (1971). These situations include "truly unusual factors" demonstrating that alternatives to the proposed action present "unique problems" or require costs of community disruption of "extraordinary magnitudes." Id. at 411, 413. The Court made clear that choosing a siting alternative that requires the use of a public park or recreation area simply because it is the least expensive or most efficient choice does not meet the rigorous mandate of the provision. The Ninth Circuit Court of Appeals has subsequently interpreted this exception quite narrowly, holding that an alterative that required dislocation of several residences and businesses and cost millions of additional dollars did not justify an exception to Section 4(f). Stop H-3 Association v. Dole, 740 F.3d 1442, 1451-2 (9th Cir. 1984). O042-12

The enormous impacts that the proposed HST alignments would have on public parklands directly contravenes the goals and directives of Section 4(f). The DEIR/S admits that, depending upon the selected alignment, the HST could have impacts on between 58 and 93 parkland resources. (DEIR/S, p. 3.17-10.) Indeed, the Diablo Range alignments will traverse Henry W. Coe State Park, including the Orestimba Wilderness portion of that park, as well as other preserved open space. Nevertheless, the DEIR/S only discloses that the Bay Area to Central Valley portion of the HST Alternative "could impact between three and eight Section 4(f) and 6(f) resources" (DEIR/S, p. 3.16-7), without even identifying (with the exception of Henry W. Coe State Park) or assessing the impacts on these resources. The DEIR/S is similarly uninformative with regard to impacts on historical resources

Nowhere in the document, moreover, is there a discussion of the "special effort" or assessment of "prudent and feasible alternatives" required by Section 4(f). Indeed the DEIR/S asserts that "[a]t this stage, it is not practical to study and measure the severity of each potential impact identified." (DEIR/S, p. 3.16-2.) Instead, this critical analysis "to identify Section 4(f) and 6(f) resources and potential prudent and feasible alternatives, and to identify and analyze potential mitigation measures" is deferred to future project-level review. (Id.) As the Supreme Court made clear in Overton Park, the essential endeavor of a lawful and legitimate 4(f)

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evaluation is to choose alterative routes which avoid 4(f) resources when such routes are feasible and prudent, not to evaluate the possibility of such avoidance in already determined corridors. Study and disclosure of these crucial and legally necessary issues must be addressed at this stage of Project approval and not delayed until after the stations and alignments have been selected.

Section 6(f) of the Land and Water Conservation Fund Act ("LWCFA") prohibits recreational land acquired or developed through LWCPA grants to be converted to non-recreational uses without Department of the Interior (DOI) approval. Such approval is conditional upon the guarantee that such land will be replaced by property of equal monetary value, location, and usefulness. When such conversions are for transportation projects, such conditions apply. Here, the DEIR/S also postpones this critical and legally required analysis until the project-level review. (DEIR/S, p. 3.16-13.) Deferral of this consideration until after the stations and alignments have been chosen is both inconsistent and contrary to the intention of Section 6(f). O042-12 cont.

IV. THE DEIR/S MUST BE REWRITTEN AND RECIRCULATED.

"Public participation is an essential part of the CEQA process." (CEQA Guidelines § 15201.) The requirement for public review provides for "the strongest assurance of the adequacy of the EIR." Sutter Sensible Planning, Inc. v. Board of Supervisors, 122 Cal.App.3d 813, 823 (1981). The purpose of the public review process is to demonstrate that the agency has, in fact, analyzed the ecological impacts of its action, that appropriate alternatives and mitigation measures have been considered, and that input and information has been received from a variety of sources and expertise. Schoen v. Department of Forestry and Fire Protection 58 Cal.App.4th 556, 572-3 (1997). "Public review permits accountability and informed self-government." Id. at 573 (citation omitted).

When, however, an EIR is "so fundamentally and basically inadequate and conclusory in nature that public comment on the draft [is] in effect meaningless" then recirculation of a redrafted EIR is required. Laurel Heights II, 6 Cal.4th at 1130 (citing Mountain Lion Coalition v. Fish & Game Commission, 214 Cal.App.3d 1043 (1989)); CEQA Guidelines § 15088.5(a)(4). Where it is impossible for the public to fully assess the environmental impacts associated with the proposed project, the DEIR/S must be rewritten and recirculated. Mountain Lion Coalition, 214 Cal.App.3d at 1051. Here the DEIR/S is "woefully inadequate" in disclosing the numerous environmental consequences of the proposed Project and, as such, "deprived the public of its opportunity to comment[.]" Laurel Heights II, 6 Cal.4th at 1131. O042-13

CEQA also requires recirculation of a draft EIR "[w]hen significant new information is added to an environmental impact report" after public review and comment on the earlier draft EIR. (Pub. Res. Code § 21092.1; CEQA Guidelines § 15088.5(a).) The opportunity

for meaningful public review of significant new information is essential "to test, assess, and evaluate the data and make an informed judgment as to the validity of the conclusions to be drawn therefrom." Sutter Sensible Planning, Inc., 122 Cal.App.3d at 822; City of San Jose v. Great Oaks Water Co., 192 Cal.App.3d 1005, 1017 (1987). An agency cannot simply release a draft report "that hedges on important environmental issues while deferring a more detailed analysis to the final [EIR] that is insulated from public review." Mountain Lion Coalition, 214 Cal.App.3d at 1052.

As described at length in this letter, in order to adequately assess the proposed Project's environmental impacts, and to identify effective mitigation measures and alternatives capable of minimizing the Project's significant impacts, extensive new information and analysis will need to be added to the DEIR/S. CEQA requires that the public have a meaningful opportunity to review and comment upon this significant new information in the form of a recirculated draft DEIR. O042-13 cont.

CONCLUSION

For the foregoing reasons, the San Felipe Ranch urges the agencies to delay further consideration of the High Speed Rail Project until after the agencies prepare and recirculate a revised DEIR/S that fully complies with CEQA, the CEQA Guidelines, and NEPA.

On behalf of the San Felipe Ranch, we request, pursuant to Public Resources Code section 21092.2, notice of any and all CEQA environmental documents pertaining to this Project. (Such documents include: (a) notices of preparation (NOP), (b) notices of exemption, (c) initial studies, (d) negative declarations, (e) draft and/or final environmental impact reports (DEIR/FEIR), and (f) notices of determination (NOD). This remains a standing request under section 21092.2.)

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP
ELLEN J. GARBER
ROBIN A. SALSBURG
By Ellen J. Garber

Attachment: Diane Renshaw letter
cc: Robert Stephens
Ralph and Barbara Jacobsen

[P:\PACKARD\EJG\003v2 (DEIR comment ltr).WPD]

Comment Letter O042 Continued

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August 30, 2004

Mr. Dan Leavitt
California High Speed Rail Authority
925 L Street, Suite 1425
Sacramento, CA 95814

Subject: Comments on the California High-Speed Train Draft Program Environmental Impact Report/Environmental Impact Statement (DEIR/EIS)

Dear Mr. Leavitt:

I am writing on behalf of my client, the San Felipe Ranch, with comments on the California High-Speed Train Draft Program Environmental Impact Report/Environmental Impact Statement (DEIR/EIS). It is my opinion that this DEIR/EIS does not meet CEQA requirements of full disclosure regarding the potential impacts on biological resources and wetlands, particularly those on the San Felipe Ranch. Further, the DEIR/EIS uses information on biological resources and wetlands in an inappropriate and misleading manner, and as a consequence understates the potential impacts that would result from the selection and development of all three options for the Diablo Direct Alignment. All three of the proposed Diablo Direct Alignment options cross the lands of the San Felipe Ranch.

I am a consulting ecologist and principal of my own firm, and have over 28 years experience working in the San Francisco Bay area and elsewhere throughout California. My professional expertise includes sensitive species survey and management, grassland and grazing issues, jurisdictional wetland determinations, and familiarity with state and federal requirements and CEQA. I am equally experienced as a wildlife ecologist and a vegetation specialist, and I am a certified by the Ecological Society of America as a Senior Ecologist.

While my comments here apply most specifically to the San Felipe Ranch, I am familiar enough with the landscape and ranchland to the east along the remainder of the Diablo Direct Alignments to assert that the same types of considerations and impacts that will affect the San Felipe Ranch are also to be expected on these lands to the east. Because my familiarity with CEQA is greater than my familiarity with NEPA my comments are apply primarily to the former.

INTRODUCTION

The San Felipe Ranch is situated in the Hamilton Range, a part of the Diablo Range of the inner Coast Range. Downtown San Jose lies roughly 20 miles to the northwest, and the Coyote Valley is roughly 10 miles to the west and southwest. To the north, east, and south of the San Felipe Ranch are approximately 1,900 square miles of remote, undeveloped public and private lands that stretch from just south of the Livermore – Altamont Pass area on the north to the Pacheco Pass on the south.

Much of this open terrain consists of large ranches, many of which date back to the Spanish land grant days. The San Felipe Ranch is on the western side of this rugged and relatively wild landscape, flanked by Henry W. Coe State Park on the south and southwest, Joseph Grant County Park and Lick Observatory on Mt. Hamilton on the north, and private ranchland on the east and elsewhere. Because it is situated so close to a major urban center, this large expanse of open land on the Hamilton Range is a public treasure of immense value as undisturbed wildlife habitat, as a relatively intact and interconnected ecological unit, and as a working landscape.

The San Felipe Ranch comprises approximately 28,700 acres, almost 45 square miles, of steep, rugged terrain, punctuated with a number of open valleys and drained by a network of seasonal and perennial watercourses. Vegetation on the ranch is generally representative of the Mt. Hamilton Range, and includes mixed oak woodland, annual grassland, valley needlegrass grassland*, sycamore alluvial woodland*, blue oak woodland, chamise chaparral, coastal scrub, and stands of grey pine and ponderosa pine. There are outstanding examples of valley oak woodland* in Horse Valley on the western part of the Ranch; some of the trees in this valley oak woodland are estimated to be 500 years old, and many other individual trees on the ranch qualify as heritage trees (Santa Clara County, §C16-12, 2004).

The ranch is well-supplied with water from perennial streams and seasonal watercourses, which also support valuable riparian habitat* and form an interconnected network of corridors that facilitate wildlife movement inside and outside the ranch. There are native fish in the streams on the San Felipe Ranch, including rainbow trout and California roach. Throughout the ranch there is a complex pattern of seeps and springs*, some of which are evident only as patches of *Juncus* and *Carex* on a hillside, others of which form more extensive wetlands* or have been developed as permanent and seasonal ponds (habitats that meet the definition of a natural community of concern as listed by the California Department of Fish and Game Natural Diversity Database [CNDDB] are marked with an *).

At present most of the ranch is grazed by cattle, managed under a program that maintains open grassland, keeps weeds under control, and is compatible with a diversity of native plant communities, including bunchgrasses, spring wildflowers, and other indigenous forbs. Herds of tule elk and pronghorn antelope have been reintroduced to the ranch and are now established in the area (Schauss, pers. comm.). Reports and lists prepared for the Ranch by resource experts document the presence a wide variety of wildlife, including white-tailed kite and golden eagle (California fully-protected species), California tiger salamander and California red-legged frog (Federal Threatened species), burrowing owls and western pond turtles (California Species of Concern) and a wide variety of neotropical migratory songbirds,

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waterfowl, and raptors, protected under state and federal statutes. Some but by no means all of these occurrences have been reported to the CNDDB.

IMPACTS TO BIOLOGICAL RESOURCES AT THE SAN FELIPE RANCH

There are three proposed options for the Diablo Range Direct alignment: the Northern Alignment Option, the Tunnel Under Park Option, and the Minimize Tunnel Option. All three cut through the middle of the San Felipe Ranch, and all have potentially significant impacts that are not adequately described or mitigated in the DEIR/EIS.

Northern Alignment Option

This option crosses a total of 7.4 miles of San Felipe Ranch lands; 1.4 miles would be at grade, and 6 miles would be in two tunnels. From the western boundary of the ranch, the proposed alignment would eliminate roughly 0.5 miles of San Felipe Road, cross a seasonal watercourse that is a Corps of Engineers jurisdictional water of the U.S., and impact the historic Highland School building and two ranch reservoirs. This proposed alignment is less than 2 miles from the functional center of the ranch where ranch buildings and residences are located, and construction at this location as shown in the DEIR/EIS would block the primary entrance into San Felipe Ranch. East of the historic school the at-grade alignment is shown on the DEIR/EIS maps as traversing a steep wooded hillside with a 200-foot elevation change; construction of the at-grade alignment at this location would almost certainly require a deep cut, with associated earth-moving concerns and potential erosion and sedimentation impacts. Removal of heritage trees requires a separate application to the Santa Clara County Heritage Commission, site-specific study and evaluation, and a public hearing. Removal of heritage trees is subject to approval by the Heritage Commission (Santa Clara County, 2004).

Next, the proposed alignment would enter a short section (roughly 0.5 miles) of tunnel, cutting off a secondary ranch road. The western entrance to the tunnel is near the top of a ridgeline, roughly 220 feet above the stream crossing by the Highland School; the placement of the proposed tunnel is not at all responsive to the topography of the local setting and appears to be arbitrary.

The end of the short tunnel would be roughly 200 feet lower than the entrance; the next at-grade segment would require two crossings of San Felipe Creek, a perennial stream lined with sycamore woodland, a sensitive natural plant community. California red-legged frogs (CRLF)(Federal Threatened species) and California tiger salamanders (CTS)(Federal Threatened species) have been reported from this drainage within two miles of this crossing (CNDDB, 2004), and should be assumed to be present at and impacted by the crossings. The alignment continues at grade for roughly 0.6 miles, cuts across another ranch road, and crosses a tributary stream corridor, also lined with sycamore and willow and also potential habitat for CRLF and CTS. From this stream valley the at-grade segment cuts sharply up a wooded hillside. The DEIR/EIS maps show this segment climbing approximately 500 vertical feet over a linear distance of 800 feet (a very steep 1.6:1 grade), at the top of this climb entering another tunnel near the northern end of Henderson Ridge.

From Henderson Ridge the tunnel continues under the Ranch another 5 miles, passing under the eastern Ranch boundary north of Horse Valley. In between Henderson Ridge and Horse Valley are at least two watercourses, and CRLF and WPT have been identified at ponds in the vicinity (Schauss, pers. comm., Renshaw, pers. obs.). Horse Valley and the nearby hillsides are another location where sensitive species are known to occur (CRLF, Western Pond Turtle, CTS, valley oak woodland) (Schauss, pers. comm., Renshaw, pers. obs.).

Impacts to sensitive species, sycamore riparian woodland, and jurisdictional waters are all considered significant under CEQA, but none of these impact types are addressed in an informative way in the DEIR/EIS, and no appropriate mitigation measures are proposed. The placement of the tunnels and the at-grade sections of the alignments seem to be arbitrary and not responsive to local topography or the presence of reported and mapped sensitive species (CNDDB, 2004). The DEIR/EIS assertion that the tunnels will avoid impacts is not supported by the proposed route maps published in the DEIR/EIS, and impacts associated with the at-grade sections (fill in wetlands, fencing, access roads, fragmentation of habitat, blocked animal movement, loss and disturbance of sensitive species and natural communities) are ignored.

Tunnel Under Park Option

The Tunnel Under Park Option crosses San Felipe Ranch in roughly the middle of the property, just south of Henderson Ridge. The portion of the alignment within the Ranch boundaries is roughly 4.6 miles long, with 3.3 miles of tunnel and 1.3 miles at grade. This alignment crosses into rough terrain on San Felipe Ranch on the south flank of Henderson Ridge, crosses a seasonal stream, and follows a ridgeline parallel to Carlin Canyon for roughly 0.75 miles. At that point there is a short (0.3 mile) length of tunnel where the alignment passes under a north-south trending ridge, followed by an at-grade section across several hundred feet of steep elevation change and a stream crossing. A shed tule elk antler was found along this ridgeline on 8-17-2004 (Renshaw, pers. obs.). The alignment enters a second tunnel just before it crosses Carlin Canyon, and continues to the east for almost another mile before leaving the Ranch property. As with the Northern Alignment Option, the placement of the at-grade segment on the steep side slope and across streams in Carlin Canyon is not responsive to the local topography, and does not appear to be oriented so as to avoid impacts.

Carlin Canyon is an important watercourse and east-west movement corridor for wildlife on the San Felipe Ranch, and would be impacted by both the at-grade section of the alignment at this location and by the second tunnel entrance. Construction of the at-grade segments and the tunnel entrances in the indicated locations would require substantial cuts and fills on a steep hillside location, with potentially significant impacts to the jurisdictional waters in Carlin Canyon from erosion and sedimentation. The engineering and geological feasibility of this alignment location is not discussed in the DEIR/EIS. Fencing along the at-grade section would disrupt wildlife movements, but there is no description in the DEIR/EIS of what the fencing would look like, or how effective it would be in excluding wildlife from the high-speed train path.

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Minimize Tunnel Option

This third alignment is 4.2 miles long, located just south of the previously discussed Tunnel Under Park alignment, but it would be at a slightly lower elevation closer to the watercourse at the bottom of Carlin Canyon. From the western edge of the Ranch there would be over 1 mile constructed at-grade in the deep canyon. Beyond this point the alignment would be contained in a tunnel and would continue underground for approximately 3 miles until it exited the Ranch. Impacts associated with constructing and operating the high-speed rail line along this alignment would be significant and similar to those discussed above under the Tunnel Under Park option.

There are no reports for sensitive species in the immediate vicinity of Carlin Canyon, although CRLF have been reported nearby. Lack of reported occurrences is likely due to the absence of surveys in this area, as there is good suitable habitat in and around the canyon for a variety of sensitive plant and animal species. The watercourse at the bottom of Carlin Canyon and its tributaries are jurisdictional waters of the U. S.; disturbance of these streams is regulated by the U.S. Army Corps of Engineers and by California Department of Fish and Game. While most of the other major valleys on the San Felipe Ranch and in this part of the Hamilton Range trend north-south, this deeply-incised wooded canyon, flanked by spectacular rock outcroppings studded with Native American bedrock mortars (Stephens, 1995), runs east-west, providing an important cross-connectivity link for wildlife movement. The minimal mitigation "strategies" proposed in the DEIR/EIS include tunnels, underpasses, and culverts to move animals across the alignment barrier, but these measures would not mitigate blockage and disruption of movement along the linear corridor.

DEIR/EIS ANALYSIS OF IMPACTS

Section 3.15.4 of the DEIR/EIS compares the potential impacts of the various alternatives on biological and wetland/water resources. However, this comparative analysis is based on incomplete information, and the DEIR/EIS conclusions are seriously flawed in several important regards. As an example, on p. 3.15-21, the DEIR/EIS concludes that "...the HST Alternative would potentially affect fewer special-status species than the Modal Alternative (24 to 38 species for the proposed HST Alternative compared to 80 species for the Modal Alternative), *because of proposed tunneling in a sensitive part of the region* " (added emphasis is mine). Table 3.15-1 summarizes these "potential impacts," presenting special status species numbers, acres of sensitive vegetation, and hectares of wetlands as if they represent reliable quantitative data, without noting that these numbers are derived from data with major gaps and limitations.

CEQA requires that, among other things, an "...EIR serves not only to protect the environment but also to demonstrate to the public that it is being protected [and that] the EIR is to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action" (CEQA Guidelines, §15003). CEQA does not require technical perfection in an EIR, but rather adequacy, completeness, and a good-faith effort at full disclosure. This DEIR/EIS fails to meet that minimal standard.

Incomplete data are used to analyze and compare alignment options

First, the DEIR/EIS analysis relies on counts of special-status species taken from California Natural Diversity Data Base (CNDDB) mapping. These maps show only reported occurrences, and frequently are record-heavy in areas where site-specific environmental surveys have been required as part of development projects. Typically, private lands and ranches in the area have not been surveyed by resource experts, or the owners keep wildlife and rare plant information confidential. As a consequence, the large tracts of private land that comprise almost the entire Diablo Range Direct Alignment footprint are likely to have no or few reported occurrences at the CNDDB. All CNDDB data that are made available by California Department of Fish and Game (CDFG) are accompanied with the warning that CNDDB is a positive sighting data base and that the data sets cannot be considered complete for all sensitive species that might occur in a given area. Because the number of special-status species in the CNDDB is a function of reporting activity and not a definitive indicator of the presence of sensitive species or their habitat, using a comparative count of these special-status species occurrences is meaningless in determining absolute sensitivity, and its use to determine a higher or lower level of impact is inaccurate and misleading. Further, the numerical comparison makes no distinction between the rarity or legal status of the species involved, giving equal weight to highly sensitive and regulated Federal Threatened or Endangered species that would require a Section 7 take permit, California fully-protected species (no take permitted at all); California Species of Concern (no specific protective code or ordinance, but conservation is of concern to CDFG), or a California Native Plant Society List 3 species (a watch list only; no legal protections).

Data on hectares of sensitive vegetation were derived from California GAP analysis maps, and hectares and linear feet of jurisdictional waters and wetlands were taken from NWI maps, both of which are coarse-grained and not guaranteed to show sensitive resources at a fine scale. Furthermore, the NWI maps for the four 7.5' quadrangles that include the San Felipe Ranch (Morgan Hill, Isabel Valley, Mt. Sizer, and Lick Observatory) were not available and were excluded from the tabulation of hectares of wetland and linear feet of waters. Absence of data on wetlands, waters, or sensitive vegetation cannot be assumed to indicate an absence of the resource, but are more likely to indicate a gap in the baseline data. Because the data presented in the DEIR/EIS on vegetation, wetland, and jurisdictional waters lack sufficient detail to analyze the actual potential impacts of the proposed options, use of these data to compare the various alignment options is meaningless and misleading.

Tunneling will have undescribed and unanalyzed impacts on sensitive resources

The second error in the DEIR/EIS conclusion is that the proposed tunneling will be impact-free, and that sensitive resources along tunneled segments of the alignment will not be adversely affected. There is no information presented in the DEIR/EIS that supports this assumption. The technical study on tunnels (Parsons Brinkerhoff, 2004) reports the conclusions of a conference on feasible techniques and makes recommendations regarding tunnel configuration. None of these recommendations are presented as part of the project

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description, however, and there is no good discussion as to what impacts the tunnel construction would potentially have.

Potential impacts associated with tunnels are likely to include construction of access roads for preconstruction survey and geological testing; construction noise, dust, and lights; staging and stockpiling areas, fuel containment areas; and the need to build new access roads to reach the tunneled areas, with associated road kill, wetland and watercourse fill, and disturbance of nesting and breeding wildlife, but these impacts are neither defined nor described in the DEIR/EIS in any way.

In association with the tunnels are aerial structures proposed at approximately Station 43+000 on the Northern Alignment and at Station 29+000 on the Minimize Tunnel option. While neither of these bridges is on the San Felipe Ranch, both locations are in the middle of other sensitive, undeveloped open space lands with no existing road access. There is no description of these bridges in the DEIR/EIS, nor is there discussion of how they would be built, how their locations were chosen, and no discussion of any sort of impacts that might be associated with their construction and on-going maintenance of the aerial structures and their necessary access roadways.

The feasibility study (Parsons Brinkerhoff, 2004) recommends using a combination of tunnel-boring machines and drill-and-blast to construct the long tunnels across the Diablo Range alignment. The assumption is made that where the alignment is in an underground tunnel, impacts to sensitive resources on the surface along the alignment will be avoided. Where tunneling is done without disturbing the overlying surface this may in part be a valid assumption, but there is no discussion or consideration of how construction requirements will be accomplished, and what potential impacts may occur at the tunnel entrances. It will be at the tunnel entrances and exits where the large amounts of excavated material will be removed and transported to unknown locations for deposition or use as fill. Tunneling through bedrock in these mountains is likely to intersect with existing groundwater. While the tunnel may be protected from the water seeping in, there is no guarantee that subsurface disturbance of seeps and springs will not have a deleterious impact on these aquatic resources, adversely affecting surface flows and known CTS, CRLF, and WPT habitat, disrupting springs and seeps (all are natural communities of concern), and disrupting water supplies for resident wildlife and cattle populations.

Tunnel through sensitive areas is not continuous; approximately half the length is at-grade

A third flaw in the assumption that by tunneling the Diablo Direct options will avoid impacts to a very sensitive part of the region is that the tunnel segment proposed for all three options is not continuous, and in fact contains almost as much at-grade track as there is tunneled track. At-grade segments appear to be located largely in sensitive areas (streams, wetlands), although this is difficult to determine precisely with the DEIR/EIS description and maps. At-grade segments will almost certainly require placement of fill, fencing to exclude wildlife, access roads, and other accessory activities, although the DEIR/EIS fails to describe this important aspect of the project.

All three Diablo Range Direct options will impact undisturbed open lands with regionally significant wildlife habitat value, and will disrupt wildlife movement corridors within and between those lands

The DEIR/EIS concludes that the proposed tunneling in a sensitive part of the region will avoid or minimize impacts, but fails to discuss the fact that all three options are proposed for an intact, undisturbed landscape with biological values that are of state-wide significance. Almost 1,900 square miles of oak woodland, grassland, and other native habitats that stretch from just north of Mount Hamilton and extend to near Highway 152 on the south have been earmarked as high-priority for acquisition and protection by the Mount Hamilton Project, a public interest coalition that includes the Nature Conservancy, the Santa Clara County Open Space Authority, Land Trust for Santa Clara County, Silicon Valley Conservation Council, Committee for Green Foothills, Greenbelt Alliance, Santa Clara Valley Water District, California Department of Parks and Recreation (Henry Coe State Park), California Department of Fish and Game, California Wildlife Conservation Board, East Bay Regional Park District, San Francisco Water Department, University of California, Santa Clara County, City of San Jose, Santa Clara Valley Transportation Authority, and the Santa Clara County Parks District. The rich resources of these lands are well-documented in the public record. All three proposed Diablo Range Direct options cut across the heart of this area, yet no mention is made in the DEIR/EIS of the inherent biological values of the area, or the potential conflict with those significant biological resources or with the established public interest in these lands.

There is a large body of scientific literature on the subjects of landscape continuity, values of continuous landscape units, habitat fragmentation, and the importance of maintaining connectivity between and among habitats, but none of it is referenced in the DEIR/EIS. While the DEIR/EIS does state that it referred to the Missing Linkages report (California Wilderness Coalition, 2000) it fails to mention that there are high-priority and medium-priority corridors identified by the report that would be affected by any and all of the Diablo Range Direct options.

Impacts associated with disruption of connectivity and fragmentation of habitat are not discussed at all, even though this is an area of continuing research and interest to groups as diverse as the Federal Highway Administration and the National Academy of Sciences (Tewksbury, *et al.*, 2002). There is nothing listed in the references used in the preparation of the DEIR/EIS to suggest that the report preparers even considered the topic.

Impacts to grazing lands are not evaluated, even though these ranchlands preserve valuable biological resources

Grazing lands are not included in the DEIR/EIS discussion and analysis of Agricultural Lands (Section 3.8), even though grazing land is specifically mentioned as an agricultural resource category in the State of California Department of Conservation Farmland Mapping and Monitoring Program (FMMP). Section 65570 of the Government Code defines those resource categories as follows:

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> "Category of agricultural land" means prime farmland, farmland of statewide importance, unique farmland, and farmland of local importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and grazing land. "Grazing land" means land on which the existing vegetation, whether grown naturally or through management, is suitable for grazing or browsing of livestock.

While Section 3.8 lists and discusses prime farmland, farmland of statewide importance, unique farmland, and farmland of local importance, it excludes grazing land from consideration.

Regardless of the status of grazing lands as agricultural lands for which the impacts of the HST project must be analyzed under CEQA, grazing land like that on the San Felipe Ranch and the other ranches crossed by the proposed Diablo Range Direct options provide extremely valuable wildlife habitat and preserve a diversity of native vegetational communities. In contrast to highly mechanized and irrigated row agricultural lands, where natural systems and processes are typically disrupted and biological values minimized, grazing lands may be managed as functional ecosystems that retain many biological values. When managed appropriately, grazing can an effective tool for preserving and increasing native grasslands in Central Coastal California. Immediately east of the San Felipe Ranch along the Coyote Ridge are grazed serpentine grasslands that support a long list of endangered and threatened plant and animalspecies, including the Bay checkerspot butterfly. Grazed grassland on the San Felipe Ranch may contain patches of similar habitat and the alignment options should be evaluated more carefully for the presence of serpentine species.

The large ranches that would be impacted by any of the Diablo Range Direct options have maintained to the present day grasslands, oak woodlands, riparian areas, wetlands, and other habitats that provide for the protection and recovery of many native wildlife species, including the federally-listed San Joaquin kit fox , California red-legged frog, and the California tiger salamander. These ranchlands provide critical connectivity over and between public parklands and wildlife refuges, and connect the Mount Hamilton range with the ecosystems of the Central Valley and the Coyote Valley. Without some discussion of impacts to grazing lands and the disruption of the undisturbed landscape this DEIR/EIS fails to disclose a number of potential significant impacts, and fails to meet the requirements of CEQA.

DEIR/EIS maps are inadequate to evaluate the options or analyze potential impacts

The maps that are published in the DEIR/EIS and available to the general public on-line are at a scale and level of detail that makes them useless in evaluating the proposed locations of the tunnels and at-grade sections of the alignments. The DEIR/EIS states that the biological analysis was done in part using 7.5' USGS topographic maps (1:24,000); a comparable level of detail is necessary in the proposed alignment maps in the DEIR/EIS so that the public and decision-makers can evaluate the DEIR/EIS conclusions and the subsequent ranking of options.

Maps obtained by the San Felipe Ranch show the alignment options at a scale of approximately 1:72,000. On this more detailed map the placement of tunnel vs. at-grade sections shows a general disregard for the underlying topography or the location of watercourses and mapped occurrences of sensitive features, with seemingly arbitrary placement of the tunnels. From this map it is difficult to determine whether the locations of tunnels are intended to be generic/typical/ schematic, or if they are intended to be site-specific. Locations must be site-specific, even at the program stage, because without that information it is not possible to determine if the options that are being presented are feasible from an engineering standpoint; if they have been designed to avoid sensitive biological resources, waters, and wetlands as the DEIR/EIS asserts, or if they will cause significant impacts; and if the very minimal mitigation measures proposed in the DEIR/EIS (for example, re-routing to avoid impacts; see more below) are feasible and effective.

Accurate mapping at a scale that allows meaningful interpretation of essential information must be included in a complete DEIR/EIS. This current document is inadequate in this regard and should be revised to include accurate mapping of all proposed project features at an appropriate scale.

DEIR/EIS MITIGATION STRATEGIES

Section 3.15.5 of the DEIR/EIS presents "Impact Strategies," but does not describe or recommend any actual mitigation measures that might be used to avoid or attenuate project impacts, as required by CEQA. The Biological Resources Technical Evaluation (Parsons, 2004) prepared as a part of the DEIR/EIS summarizes a number of generic and potential impacts but neglects to propose any sort of biologically appropriate mitigations for any of the impacts, and in fact includes no recommended mitigation measures of any kind. In Section 3.15.5, the DEIR/EIS states that there are gaps and other limitations inherent in the DEIR/EIS data that were collected for the analysis. Effectively acknowledging that the information presented in the DEIR/EIS is inadequate, the document defers making any meaningful mitigation recommendations to the future, proposing additional site-specific data-gathering as a mitigation "strategy." Site-specific information gathered in future studies would then be used to "...allow designs to avoid impacts on special-status species and sensitive habitat areas; " however, the DEIR/EIS does not acknowledge that this approach could change the project description. Other suggested mitigation strategies for impacts that cannot be avoided by realignment include constructing "proposed structures" above grade or in tunnels (these structures are not described); the use of wildlife underpasses to facilitate wildlife movement corridors (none are identified in this DEIR/EIS, and the problems and relative effectiveness of such solutions are not discussed), relocation of sensitive species (a strategy with questionable success, viewed by experts as a last-resort measure for most species), and use of mitigation banks, acquisition and preservation of land, and restoration of habitats (with no indication that there are any such remedies available for this project, or that they would result in an effective and acceptable reduction of impacts).

The mitigation measures proposed in this DEIR/EIS fail to meet CEQA requirements because they are neither specific nor measurable, the feasibility of the proposed measures cannot be determined based on information presented in the DEIR/EIS, and they are deferred to a future

Comment Letter O042 Continued

date, citing the need to rely on future studies for information-gathering. Further, the proposed mitigations propose changes in the project design with no consideration for additional impacts the changes may cause, and no discussion of mitigations for those potential changes; the mitigation "strategy" is in response to an incomplete project description and an impacts analysis that is based on incomplete data and flawed assumptions; and the mitigations fail to indicate any performance standards to evaluate success or failure.

To meet the most basic standards and requirements of CEQA, this document must be revised to provide an adequate discussion of impacts and recommended mitigation measures, as provided for in §15126 of that Act.

ALTAMONT ALTERNATIVE

The Altamont Pass Alternative that was identified by the High Speed Rail Commission as a preferred route in 1996 has been removed from consideration in this DEIR/EIS; the reasons given for its elimination are based on decisions that appear to have been made outside the public review process. Biological impacts that would result from an alignment through the existing developed transportation corridor over the Altamont Pass are likely to be significantly less in number and severity than those that would occur with development of any three of the Diablo Range Direct alignments proposed for the undeveloped ranchland and open space south of Mount Hamilton. There is not enough information contained in this DEIR/EIS to make that comparison, however, and no there is no substantive discussion of the reasons the previously preferred alternative was removed from consideration.

This DEIR/EIS should be revised to allow a fair and accurate comparison of all alternatives and options for connecting the San Francisco Bay area with the Central Valley alignment of the HST. The revised version should at a minimum include a comparison of the Altamont Pass Alternative with the Diablo Range Direct options and the Pacheco Pass options, using a complete project description; comparable, quantitative, and consistent data on biological and wetland resources and permitting issues; an accurate assessment of all potential impacts based on those data; and recommendations for avoidance and mitigation measures, based on existing research and industry experience, including success criteria and methodologies for monitoring, evaluating, and verifying success over time.

Thank you for providing the opportunity to comment on this DEIR/EIS.

Sincerely yours,

Diane L. Renshaw
Consulting Ecologist

Certified Senior Ecologist, Ecological Society of America

REFERENCES:

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PERSONS CONSULTED:

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Response to Comments of Ellen J. Garber, Shute, Mihaly & Weinberger LLP and Diane L. Renshaw, San Felipe Ranch, August 30, 2004 (Letter O042)

O042-1

Please see standard responses 3.15.2, 3.15.13, and 3.19.1. The topics listed will receive more detailed analysis in subsequent project level environmental review when the facilities and alignments are further refined.

O042-2

In the Final Program EIR/EIS, sections of Chapter 3 have been modified to include more detail for mitigation strategies that would be applied in general for the HST system. Each section of Chapter 3 also outlines specific design features that will be applied to project level studies and the implementation of the HST system to avoid, minimize, and mitigate potential impacts. Specific impacts and potential for site specific mitigation will be addressed in detail during subsequent project level environmental review, based on more precise information regarding location and design of the facilities proposed, and the planned operations on those facilities. The more detailed engineering associated with the project level environmental analysis will allow further investigation of ways to avoid, minimize and mitigate potential visual affects. Once the alignment is refined and the facilities are fully defined through project level analysis, and after avoidance and minimization efforts have been exhausted, site specific impacts and more detailed mitigation measures will be addressed.

O042-3

Please see standard responses 3.15.1, 3.15.2, 3.15.3, and 3.15.4.

O042-4

Section 3.18 of the Final Program EIR/EIS generally addresses construction methods and the potential for construction impacts. In addition, each section of Chapter 3 also outlines specific design features that will be applied to project level studies and the implementation of the HST system to avoid, minimize, and mitigate potential impacts. However, construction impacts are highly site-specific in nature. These issues will be addressed in detail during subsequent project level environmental review, based on more precise information regarding location and design of the facilities proposed (e.g., specific alignment, right of way corridor width, type of section (elevated, at-grade, or tunnel, excavation/earthwork, etc.). The more detailed engineering associated with the project level environmental analysis will allow the Authority to identify potential construction impacts and further investigate ways to avoid, minimize and mitigate potential construction impacts. Please also see Section 3.15.5 of the Final Program EIR/EIS in regards to "design practices" commitments for tunneling practices in sensitive areas.

O042-5

Please see response to Comment O042-4.

O042-6

The Program EIR/EIS traffic analysis was completed at a regional level of detail based on regional modeling data. Should the HST program move forward, site-specific intersection traffic analysis addressing impacts anticipated during and after the construction of the proposed facilities will be included as part of subsequent project level analysis. The project level analysis would address specific impact and significance determinations for all routes potentially affected, including rural roadways and access roads. Should the HST proposal move forward, the Authority would work closely with local governments and others to ensure consistency to ensure that improvements are identified to minimize and mitigate potential traffic impacts and adequate access and traffic handling is provided during the construction period. See also Response O042-4 regarding

construction impacts in general. Please also see Section 3.15.5 of the Final Program EIR/EIS in regards to "design practices" commitments for tunneling practices in sensitive areas.

O042-7

Section 3.3 of the Final Program EIR/EIS has been revised to more thoroughly address PM2.5 as part of the overall air quality analysis. Construction related air quality impacts would be addressed in detail in the subsequent project level analysis. For a program environmental review, not enough information is available regarding location of facilities, implementation phasing, and construction methods and needs for specific sites to accurately predict equipment use scenarios and durations that will be used to define construction emissions. More detailed construction staging, traffic handling plans, and detailed traffic analyses will be prepared at the project level to address potential construction related air quality impacts.

O042-8

Potential construction noise and vibration impacts would be addressed in more detail in the subsequent project level analysis. The program environmental review considers these issues generally, and more specific and detailed analyses cannot be prepared until more site specific and detailed design information is available. See standard response 3.4.1.

O042-9

Specific substances potentially produced or used during construction, operation, and/or maintenance of the proposed HST system will be identified during project level analysis. The generation of solid waste materials (construction and operationally related) will be addressed in subsequent project level environmental review. The methods of construction including excavation and disposal/use of excavated materials are generally discussed in Section 3.18.5 of the Final Program EIR/EIS.

O042-10

See Standard Response 3.17.1.

O042-11

The data and analyses in the PEIR/S provides an informed comparison of potential alignments that would be environmentally superior. While data will be provided in greater detail in subsequent, project-level Tier 2 analyses, the Program EIR/EIS contains sufficient data and analyses to provide for an overall comparison of the potential levels of impacts with the development of the Alternatives and alignment options. Using the date the co-lead Agencies have identified the HST option as environmentally superior and have identified various preferred HST corridor alignments for additionally review – Please see Chapter 6A of the Final PEIR/S for a summary of these HSRA Board decisions and the underlying reasons for them.

O042-12

The Authority will not pursue HST alignments crossing Henry Coe State Park. See Standard Response 6.3.1. In terms of identifying alternatives, see Standard Response 3.16.1. Identification of site-specific impacts for project-level analysis will be appropriate in the future and can not be provided at this program level. Subsequent preliminary engineering and project level environmental review will provide further opportunities to avoid and minimize the potential effects to 4(f) and 6(f) resources. Once a project level analysis of the alignment, and only after avoidance and minimization efforts have been exhausted, will mitigation be addressed. Please see Appendix 3.16-A for a listing of potential impacts to 4(f) and 6(f) properties.

O042-13

The Co-lead agencies disagree with the comment that the overall analysis is fundamentally inadequate and that recirculation is required. The Co-lead agencies consider the program level analysis adequate and appropriate to satisfy CEQA and NEPA requirements and to provide a reasoned comparison of overall system alternatives

and HST alignment and station options based on a broad review of environmental data compiled for the state-wide study area.

O042 (attached letter from Diane Renshaw)

Acknowledged. Please refer to responses to Comments O042-1 through O042-13.